

4 MAY 1981

MEMORANDUM FOR: The Honorable Richard V. Allen
Assistant to the President for
National Security Affairs

SUBJECT: Proposed Revision of Executive Order 12036,
United States Intelligence Activities

REFERENCES: A. Your memorandum, dated April 24, 1981,
Subject: Revision of E.O. 12036

B. Memorandum from James W. Nance, dated
April 1, 1981, Subject: Revisions to
Executive Order 12036

1. In accordance with your request and our discussions on this subject, attached herewith is a proposed new Executive Order concerning United States Intelligence Activities. The draft Order has been developed after consideration of the Intelligence Community's advice and your guidance of 24 April 1981.

2. In accordance with my commitment to the Senate Select Committee on Intelligence, I have provided a copy of this proposed new Executive Order to Chairmen Goldwater and Boland for their review and comment. I recommend that the proposed Order be promptly scheduled for NSC consideration and the President's review and approval.

WJ/ William J. Casey

William J. Casey

Attachment:
As stated.

EXECUTIVE ORDER _____

UNITED STATES
INTELLIGENCE ACTIVITIES

By virtue of the authority vested in me by the Constitution and statutes of the United States of America, including the National Security Act of 1947, as amended, and as President of the United States of America, in order to provide for the effective conduct of United States intelligence activities and the protection of constitutional rights, it is hereby ordered as follows:

SECTION 1

DIRECTION, DUTIES AND
RESPONSIBILITIES WITH
RESPECT TO THE NATIONAL
INTELLIGENCE EFFORT

1-1. National Security Council.

1-101. Purpose. The National Security Council (NSC) was established by the National Security Act of 1947 to advise the President with respect to the integration of domestic, foreign, and military policies relating to the national security. The NSC shall act as the highest Executive Branch entity that provides review of, guidance for, and direction to the conduct of all national foreign intelligence, counterintelligence, and special activities.

1-102. Committees. The NSC shall establish such committees as may be necessary to carry out its functions and responsibilities under this Order.

1-2. National Foreign Intelligence Advisory Groups.

1-201. Establishment and Duties. The Director of Central Intelligence shall establish such boards, councils, or groups as required for the purpose of obtaining advice from within the Intelligence Community concerning:

(a) Production, review and coordination of national foreign intelligence;

(b) Priorities for the National Foreign Intelligence Program budget;

(c) Interagency exchanges of foreign intelligence information;

(d) Arrangements with foreign governments on intelligence matters;

(e) Protection of intelligence sources and methods;

(f) Activities of common concern;

(g) Such other matters as may be referred by the Director of Central Intelligence.

1-202. Membership. Advisory groups established pursuant to this section shall be chaired by the Director of Central Intelligence and shall consist of senior representatives from organizations within the Intelligence Community and from departments or agencies containing such organizations, as designated by the Director of Central Intelligence. Groups for consideration of substantive intelligence matters will include representatives of organizations involved in the collection, processing, and analysis of intelligence. A senior representative of the Secretary of Commerce, Attorney General, Assistant to the President for National Security Affairs, and the Office of the Secretary of Defense shall participate in any group which deals with other than substantive intelligence matters.

1.3. Director of Central Intelligence.

1-301. Duties and Responsibilities of the Director of Central Intelligence. In order to discharge the duties and responsibilities prescribed by law, the Director of Central Intelligence shall be responsible directly to the NSC and, in addition to the duties and responsibilities specified elsewhere in this Order, shall:

(a) Act as the primary adviser to the President and the NSC on national foreign intelligence and provide the President and other officials in the Executive Branch with national foreign intelligence;

(b) Be the head of the CIA and of such staff elements as may be required for discharge of the Director's Intelligence Community responsibilities;

(c) Act, in appropriate consultation with the departments and agencies, as the Intelligence Community's principal advocate to the Congress, the news media and the public, and

facilitate the use of national foreign intelligence products by the Congress in a secure manner;

(d) Develop, consistent with the requirements and priorities established by the NSC, such objectives and guidance for the Intelligence Community as will enhance capabilities for responding to expected future needs for national foreign intelligence;

(e) Promote the development and maintenance of services of common concern by designated foreign intelligence organizations on behalf of the Intelligence Community;

(f) Ensure implementation of special activities;

(g) Formulate policies concerning intelligence arrangements with foreign governments, and coordinate intelligence relationships between agencies of the Intelligence Community and the intelligence or internal security services of foreign governments;

(h) Conduct a program to ensure that foreign intelligence information is adequately protected through proper classification;

(i) Establish, with the advice of the Intelligence Community, common security standards and procedures to govern all individuals and entities having access to or that distribute foreign intelligence and counterintelligence, provided that such standards shall not preclude any department or agency from imposing higher security standards or from complying with specific statutory requirements applicable to that department or agency;

(j) Develop, in accordance with applicable law and restrictions contained in this Order, specific means to protect intelligence sources and methods from unauthorized disclosure, including the establishment of minimum standards and procedures to govern all individuals and entities having access to or that distribute information that would reveal these sources and methods;

(k) Establish uniform criteria for the determination of relative priorities for the transmission of critical national foreign intelligence, and advise the Secretary of Defense concerning the communications requirements of the Intelligence Community for the transmission of such intelligence;

(l) Provide appropriate intelligence to departments and agencies not within the Intelligence Community;

(m) Establish appropriate committees or other advisory groups to assist in the execution of the Director's responsibilities;

(n) In accordance with law and relevant procedures approved by the Attorney General under this Order, give the heads of the departments and agencies access to all intelligence, developed by the CIA or the staff elements of the Director of Central Intelligence, relevant to the national intelligence needs of the departments and agencies;

(o) Have full responsibility for production and dissemination of national foreign intelligence and authority to levy analytic tasks on departmental intelligence production organizations, in consultation with those organizations, ensuring that diverse points of view are considered fully and that differences of judgment within the Intelligence Community are brought to the attention of national policymakers;

(p) Ensure the timely exploitation and dissemination of data gathered by national foreign intelligence collection means, and ensure that the resulting intelligence is disseminated immediately to appropriate components and commands;

(q) Establish mechanisms to translate national foreign intelligence objectives and priorities developed by the NSC into specific guidance for the Intelligence Community, and ensure that such mechanisms are fully responsive to the needs of the Secretary of Defense in the conduct of military operations;

(r) Provide to departments and agencies having information collection capabilities or intelligence assets that are not a part of the National Foreign Intelligence Program advisory tasking concerning collection of national foreign intelligence, with particular emphasis placed on increasing the contribution of departments or agencies to the collection of information through overt means;

(s) Resolve conflicts of tasking priority in national foreign intelligence activities;

(t) Provide guidance for National Foreign Intelligence Program and budget development to Intelligence Community program managers and department and agency heads;

(u) Develop, with the advice of the departments and agencies concerned, the consolidated National Foreign Intelligence Program budget and present it to the President through the Office of Management and Budget;

(v) Present and justify the National Foreign Intelligence Program budget to the Congress;

(w) Review and approve all requests for reprogramming National Foreign Intelligence Program funds, in accord with guidelines established by the Office of Management and Budget;

(x) Monitor National Foreign Intelligence Program implementation and, as necessary, conduct program and performance audits and evaluations; and

(y) Together with the Secretary of Defense, ensure that there is no unnecessary overlap between national foreign intelligence programs and Department of Defense intelligence and intelligence-related activities, and provide to and obtain from the Secretary of Defense all information necessary for this purpose.

1-4. Duties and Responsibilities of the Heads of Executive Branch Departments and Agencies.

1-401. The heads of all Executive Branch departments and agencies shall, in accordance with law and relevant procedures approved by the Attorney General under this Order, give the Director of Central Intelligence access to all information relevant to the national intelligence needs of the United States and shall give due consideration to requests from the Director of Central Intelligence for appropriate support for Intelligence Community activities.

1-402. The heads of departments and agencies involved in the National Foreign Intelligence Program shall ensure timely development and submission to the Director of Central Intelligence of proposed national programs and budgets in the format designated by the Director of Central Intelligence, by the program managers and heads of component activities, and shall also ensure that the Director of Central Intelligence is provided, in a timely and responsive manner, all information necessary to perform the Director's program and budget responsibilities.

1-403. The heads of departments and agencies involved in the National Foreign Intelligence Program may appeal to the President decisions by the Director of Central Intelligence on budget or reprogramming matters of the National Foreign Intelligence Program.

1-5. Senior Officials of the Intelligence Community.

The heads of departments and agencies with organizations in the Intelligence Community or the heads of such organizations, as appropriate, shall:

1-501. Ensure that all activities of their organizations are carried out in accordance with applicable law and assigned missions;

1-502. Make use of the capabilities of other agencies within the Intelligence Community in order to achieve efficiency and mutual assistance;

1-503. Contribute in their areas of responsibility to the national foreign intelligence products;

1-504. Establish internal policies and guidelines governing employee conduct and ensure that such are made known to each employee;

1-505. Provide for strong, independent, internal means to identify, inspect, and report on unlawful or improper activity;

1-506. Report to the Attorney General possible violations of those federal criminal laws specified in procedures agreed upon by the Attorney General and the head of the department or agency concerned in a manner consistent with the protection of intelligence sources and methods, as specified in those procedures;

1-507. In any case involving serious or continuing breaches of security, recommend to the Attorney General that the case be referred to the FBI for further investigation;

1-508. Furnish the Director of Central Intelligence and the NSC, in accordance with applicable law and procedures approved by the Attorney General under this Order, the information required for the performance of their respective duties;

1-509. Report to the Intelligence Oversight Committee of the President's Foreign Intelligence Advisory Board and keep the Director of Central Intelligence appropriately informed, concerning any intelligence activities of their organizations which raise serious questions of legality or propriety;

1-510. Protect intelligence and intelligence sources and methods from unauthorized disclosure consistent with guidance from the Director of Central Intelligence and the NSC;

1-511. Disseminate intelligence to cooperating foreign governments under arrangements established or agreed to by the Director of Central Intelligence;

1-512. Execute programs to protect foreign intelligence through proper classification;

1-513. Instruct their employees to cooperate fully with the Intelligence Oversight Committee of the President's Foreign Intelligence Advisory Board; and

1-514. Ensure that the Inspectors General and General Counsel for their organizations have access to any information necessary to perform their duties assigned by this Order.

1-6. The Central Intelligence Agency.

All duties and responsibilities of the CIA shall be related to the intelligence functions set out below. As authorized by the National Security Act of 1947, as amended, the CIA Act of 1949, as amended, and other laws, regulations and directives, the CIA, under the direction of the NSC, shall:

1-601. Collect foreign intelligence, including information not otherwise obtainable, and develop, conduct, or provide support for technical and other programs which collect national foreign intelligence. The collection of information within the United States shall be coordinated with the FBI as required by procedures agreed upon by the Director of Central Intelligence and the Attorney General;

1-602. Produce and disseminate foreign intelligence relating to the national security, including foreign political, economic, scientific, technical, military, geographic, biographic, and sociological intelligence to meet the needs of the President, the NSC, and other elements of the United States Government;

1-603. Collect, produce and disseminate intelligence on foreign aspects of narcotics production and trafficking;

1-604. Conduct counterintelligence activities outside the United States and coordinate all counterintelligence activities conducted outside the United States by other departments and agencies;

1-605. Without assuming or performing any internal security functions, conduct counterintelligence activities within the United States, but only in coordination with the FBI as required by procedures agreed upon by the Director of Central Intelligence and the Attorney General;

1-606. Produce and disseminate counterintelligence studies and reports;

1-607. Coordinate the collection outside the United States of intelligence information by clandestine means and coordinate the collection outside the United States of intelligence information not otherwise obtainable;

1-608. Conduct special activities approved by the President and carry out such activities consistent with applicable law;

1-609. Conduct services of common concern for the Intelligence Community as directed by the NSC;

1-610. Carry out or contract for research, development and procurement of technical systems and devices relating to authorized functions;

1-611. Protect the security of its installations, activities, information, property, and employees by appropriate means, including such investigations of applicants, employees, contractors, and other persons with similar associations with the CIA as are necessary;

1-612. Conduct such administrative and technical support activities within and outside the United States as are necessary to perform the functions described in section 1-601 through 1-611 above, including procurement and essential cover and proprietary arrangements.

1-613. Provide legal, legislative, oversight, and administrative support services to the staff elements of the Director of Central Intelligence.

1-7. The Department of State.

The Secretary of State shall:

1-701. Overtly collect foreign political, sociological, economic, scientific, technical, political-military and associated biographic information;

1-702. Produce and disseminate foreign intelligence relating to United States foreign policy as required for the execution of the Secretary's responsibilities;

1-703. Disseminate, as appropriate, reports received from United States diplomatic and consular posts abroad;

1-704. Consult with the Director of Central Intelligence to ensure that national foreign intelligence activities are useful to and consistent with United States foreign policy;

1-705. Transmit reporting requirements of the Intelligence Community to the Chiefs of United States Missions abroad; and

1-706. Support Chiefs of Mission in discharging their statutory responsibilities for direction and coordination of mission activities.

1-8. The Department of the Treasury.

The Secretary of the Treasury shall:

1-801. Overtly collect foreign financial and monetary information;

1-802. Participate with the Department of State in the overt collection of general foreign economic information;

1-803. Produce and disseminate foreign intelligence relating to United States economic policy as required for the execution of the Secretary's responsibilities; and

1-804. Conduct, through the United States Secret Service, activities to determine the existence and capability of surveillance equipment being used against the President of the United States, the Executive Office of the President, and, as authorized by the Secretary of the Treasury or the President, other Secret Service protectees and United States officials. No information shall be acquired intentionally through such activities except to protect against such surveillance, and those activities shall be conducted pursuant to procedures agreed upon by the Secretary of the Treasury and the Attorney General.

1-9. The Department of Defense.

The Secretary of Defense shall:

1-901. Collect national foreign intelligence and be responsive to collection tasking by the Director of Central Intelligence;

1-902. Collect, produce and disseminate foreign military and military-related intelligence information, including scientific, technical, political, geographic and economic information as required for execution of the Secretary's responsibilities;

1-903. Conduct programs and missions necessary to fulfill national and tactical foreign intelligence requirements;

1-904. Conduct counterintelligence activities in support of Department of Defense components outside the United States in

coordination with the CIA, and within the United States in coordination with the FBI pursuant to procedures agreed upon by the Secretary of Defense and the Attorney General, and produce and disseminate counterintelligence studies and reports;

1-905. Direct, operate, control and provide fiscal management for the National Security Agency and for defense and military intelligence and national reconnaissance entities;

1-906. Conduct, as the executive agent of the United States Government, signals intelligence and communications security activities, except as otherwise directed by the NSC;

1-907. Provide for the timely transmission of critical intelligence, as defined by the Director of Central Intelligence, within the United States Government;

1-908. Review budget data and information on Department of Defense programs within the National Foreign Intelligence Program and review budgets submitted by program managers to the Director of Central Intelligence to ensure the appropriate relationship of the National Foreign Intelligence Program elements to the other elements of the Defense program;

1-909. Monitor, evaluate and conduct performance audits of Department of Defense intelligence programs;

1-910. Carry out or contract for research, development and procurement of technical systems and devices relating to authorized intelligence functions;

1-911. Protect the security of Department of Defense installations, activities, information and personnel by appropriate means including such investigations of applicants, employees, contractors and other persons with similar associations with the Department of Defense as are necessary;

1-912. Establish and maintain military intelligence relationships and military intelligence exchange programs with selected cooperative foreign defense establishments and international organizations, and ensure that such relationships and programs are in accordance with policies and procedures formulated by the Director of Central Intelligence; and

1-913. Conduct such administrative and technical support activities within and outside the United States as are necessary to perform the functions described in sections 1-901 through 1-912 above.

1-10. Intelligence Components Utilized by the Secretary of Defense.

In carrying out the responsibilities assigned in sections 1-901 through 1-913, the Secretary of Defense is authorized to utilize the following:

1-1001. Defense Intelligence Agency, whose responsibilities shall include:

(a) Collection, production or, through tasking and coordination, provision of military and military-related intelligence for the Secretary of Defense, the Joint Chiefs of Staff, other Defense components, and, as appropriate, non-Defense agencies;

(b) Collection and provision of military intelligence for national foreign intelligence and counterintelligence products;

(c) Coordination of all Department of Defense foreign intelligence collection requirements;

(d) Management of the Defense Attache system; and

(e) Provision of foreign intelligence and counterintelligence staff support as directed by the Joint Chiefs of Staff.

1-1002. National Security Agency, whose responsibilities shall include:

(a) Establishment and operation of an effective unified organization for signals intelligence activities, except for the delegation of operational control over certain operations that are conducted through other elements of the Intelligence Community. No other department or agency may engage in signals intelligence activities except pursuant to a delegation by the Secretary of Defense;

(b) Control of signals intelligence collection and processing activities, including assignment of resources to an appropriate agent for such periods and tasks as required for the direct support of military commanders;

(c) Collection of signals intelligence information for national foreign intelligence purposes in accordance with guidance from the Director of Central Intelligence;

(d) Processing of signals intelligence data for national foreign intelligence purposes in accordance with guidance from the Director of Central Intelligence;

(e) Dissemination of signals intelligence information for national foreign intelligence purposes to authorized elements of the Government, including the military services, in accordance with guidance from the Director of Central Intelligence;

(f) Collection, processing, and dissemination of signals intelligence information for counterintelligence purposes;

(g) Provision of signals intelligence support for the conduct of military operations in accordance with tasking, priorities and standards of timeliness assigned by the Secretary of Defense. If provisions of such support requires use of national collection systems, these systems will be tasked within existing guidance from the Director of Central Intelligence;

(h) Executing the responsibilities of the Secretary of Defense as executive agent for the communications security of the United States Government;

(i) Conduct of research and development to meet needs of the United States for signals intelligence and communications security;

(j) Protection of the security of its installations, activities, information and personnel by appropriate means including such investigations of applicants, employees, contractors and other persons with similar associations with the NSA as are necessary;

(k) Prescribing, within its field of authorized operations, security regulations covering operating practices, including the transmission, handling and distribution of signals intelligence and communications security material within and among the elements under control of the Director of the NSA, and exercising the necessary supervisory control to ensure compliance with the regulations; and

(l) Conduct of foreign cryptologic liaison relationships in accordance with policies and procedures formulated by the Director of Central Intelligence.

1-1003. Offices for the collection of specialized intelligence through reconnaissance programs, whose responsibilities shall include:

(a) Carrying out consolidated reconnaissance programs for specialized intelligence;

(b) Responding to tasking for national, departmental and tactical purposes in accordance with procedures established by the Director of Central Intelligence; and

(c) Delegating authority to the various departments and agencies for research, development, procurement, and operation of designated means of collection.

1-1004. The foreign intelligence and counterintelligence elements of the Army, Navy, Air Force and Marine Corps whose responsibilities shall include:

(a) Collection, production and dissemination of military and military-related foreign intelligence, including information on indications and warnings, foreign capabilities, plans and weapons systems, scientific and technical developments and narcotics production and trafficking. When collection is conducted in response to national foreign intelligence requirements, it will be conducted in accordance with guidance from the Director of Central Intelligence. Collection of national foreign intelligence, not otherwise obtainable, outside the United States shall be coordinated with the CIA, and such collection within the United States shall be coordinated with the FBI;

(b) Conduct of counterintelligence activities outside the United States in coordination with the CIA, and within the United States in coordination with the FBI, and production and dissemination of counterintelligence studies or reports; and

(c) Monitoring of the development, procurement and management of tactical intelligence systems and equipment and conducting related research, development, and test and evaluation activities.

1-1005. Other offices within the Department of Defense appropriate for conduct of the intelligence missions and responsibilities assigned to the Secretary of Defense. If such other offices are used for intelligence purposes, the provisions of Section 2-101 through 2-309 of this Order shall apply to those offices when used for those purposes.

1-11. The Department of Energy.

The Secretary of Energy shall:

1-1101. Participate with the Department of State in overtly collecting political, economic and technical information with respect to foreign energy matters;

1-1102. Produce and disseminate foreign intelligence necessary for the Secretary's responsibilities;

1-1103. Participate in formulating intelligence collection and analysis requirements where the special expert capability of the Department can contribute; and

1-1104. Provide expert technical, analytical and research capability to other agencies within the Intelligence Community.

1-12. The Federal Bureau of Investigation.

Under the supervision of the Attorney General and pursuant to such regulations as the Attorney General may establish, the Director of the FBI shall:

1-1201. Within the United States conduct counterintelligence and coordinate counterintelligence activities of other agencies within the Intelligence Community. When a counterintelligence activity of the FBI involves military or civilian personnel of the Department of Defense, the FBI shall coordinate with the Department of Defense;

1-1202. Conduct counterintelligence activities outside the United States in coordination with the CIA, subject to the approval of the Director of Central Intelligence;

1-1203. Conduct within the United States, when requested by officials of the Intelligence Community designated by the President, lawful activities undertaken to collect foreign intelligence or support foreign intelligence collection requirements of other agencies within the Intelligence Community;

1-1204. Produce and disseminate foreign intelligence, counterintelligence and counterintelligence studies and reports; and

1-1205. Carry out or contract for research, development and procurement of technical systems and devices relating to the functions authorized above.

SECTION 2

CONDUCT OF
INTELLIGENCE ACTIVITIES

2-1. General.

2-101. Purpose. Information about the capabilities, intentions and activities of foreign powers, organizations, or persons and their agents is essential to informed decisionmaking in the areas of national defense and foreign relations. The measures employed to acquire such information should be responsive to legitimate governmental needs and should be conducted in a manner that respects established concepts of privacy and civil liberties.

2-102. Principles of Interpretation. Sections 2-201 through 2-309 set forth governing principles which, in addition to other applicable laws, are intended to achieve the proper balance between protection of individual interests and acquisition of essential information. Those sections govern the conduct of specific activities which are authorized for the performance of the functions and responsibilities assigned to the agencies within the Intelligence Community. Those sections shall not be construed as affecting or restricting other lawful activities of intelligence components not otherwise addressed therein. Nothing in this Order shall affect the law enforcement responsibilities of any department or agency. Any collection activity conducted for a law enforcement purpose may be handled in accordance with relevant law enforcement procedures, as appropriate.

2-2. Use of Certain Collection Techniques.

2-201. General Provisions.

(a) The activities described in sections 2-202 through 2-208 shall be undertaken only as permitted by this Order and by procedures established by the head of the agency concerned and approved by the Attorney General. These procedures shall protect constitutional rights and privacy, ensure that information is gathered by the least intrusive means possible, and limit use of such information to lawful governmental purposes. The Attorney General shall provide a statement of reasons for not approving any procedures established pursuant to this section. The National Security Council may establish procedures in situations where the agency head and the Attorney General are unable to reach agreement.

(b) The Attorney General hereby is delegated the power to approve the use, for intelligence purposes, of any technique for which a warrant would be required if undertaken for law enforcement purposes, provided that such activities shall not be undertaken in the United States or against a United States person abroad without a judicial warrant, unless the Attorney General has determined that under the circumstances the activity is lawful under the Constitution and statutes of the United States.

2-202. Electronic Surveillance. The CIA may not engage in any electronic surveillance within the United States. No agency within the Intelligence Community shall engage in any electronic surveillance directed against a United States person abroad or designed to intercept a communication sent from, or intended for receipt within, the United States except as permitted by the procedures established pursuant to section 2-201. Training of personnel by agencies in the Intelligence Community in the use of electronic communications equipment, testing by such agencies of such equipment, and the use of measures to determine the existence and capability of electronic surveillance equipment being used unlawfully shall not be prohibited and shall also be governed by such procedures. Such activities shall be limited in scope and duration to those necessary to carry out the training, testing or countermeasures purpose. No information derived from communications intercepted in the course of such training, testing or use of countermeasures may be retained or used for any other purpose. Any electronic surveillance, as defined in the Foreign Intelligence Surveillance Act of 1978, shall be conducted in accordance with that Act as well as this Order.

2-203. Electronic, Optical, or Mechanical Monitoring. Electronic, optical, or mechanical devices may be used to monitor any person in the United States or any United States person abroad in circumstances where a warrant would be required if undertaken for law enforcement purposes, but only in accordance with procedures established pursuant to section 2-201. Any monitoring which constitutes electronic surveillance as defined in the Foreign Intelligence Surveillance Act of 1978 shall be conducted in accordance with that Act as well as this Order.

2-204. Physical Searches. No agency within the Intelligence Community other than the FBI may conduct any unconsented physical search within the United States except as provided in this section. The counterintelligence elements of the military services may conduct such searches directed against active duty military personnel when authorized by a military commander empowered to approve physical searches for law enforcement purposes pursuant to the Manual for Courts-Martial, Rule 315 (E.O. 12198), based upon a finding of probable cause to believe that such persons are acting as agents of foreign powers. The

CIA may conduct such searches of personal property of non-U.S. persons lawfully in its possession. All such searches within the United States, as well as all such searches conducted by any agency within the Intelligence Community outside the United States and directed against U.S. persons shall be undertaken only as permitted by procedures established pursuant to section 2-201.

2-205. Mail Surveillance. No agency within the Intelligence Community shall open mail or examine envelopes in United States postal channels, except in accordance with applicable statutes and regulations. No agency within the Intelligence Community shall open mail of a United States person that is outside U.S. postal channels except as permitted by procedures established pursuant to section 2-201.

2-206. Physical Surveillance. The FBI may conduct physical surveillance (including the use of monitoring devices for which a warrant would not be required for law enforcement purposes) directed against United States persons or others in the course of a lawful investigation. Other agencies within the Intelligence Community may undertake physical surveillance (including the use of monitoring devices for which a warrant would not be required for law enforcement purposes) directed against a United States person if:

(a) The surveillance is conducted outside the United States and the person is being surveilled in the course of a lawful foreign intelligence, counterintelligence, international narcotics or international terrorism investigation;

(b) That person is being surveilled for the purpose of protecting foreign intelligence or counterintelligence sources and methods from unauthorized disclosure or is the subject of a lawful counterintelligence or personnel, physical or communications security investigation; or

(c) The surveillance is conducted solely for the purpose of identifying a person who is in contact with someone described in subsection (a) or (b) of this section.

(d) Surveillance under paragraph (b) may be conducted within the United States of only a present employee, intelligence agency contractor or employee of such a contractor, or military person employed by a nonintelligence element of a military service.

2-207. Undisclosed Participation in Domestic Organizations. Employees of agencies within the Intelligence Community may join, or otherwise participate in, any organization within the United States on behalf of any agency within the Intelligence Community without disclosing their intelligence affiliation to

appropriate officials of the organization, but only in accordance with procedures established pursuant to section 2-201. Such procedures shall provide for disclosure of such affiliation in all cases unless the agency head or a designee finds that non-disclosure is essential to achieving lawful purposes, and that finding is subject to review by the Attorney General. Those procedures shall limit undisclosed participation to cases where:

(a) The participation is undertaken on behalf of the FBI in the course of a lawful investigation;

(b) The organization concerned is composed primarily of individuals who are not United States persons and is reasonably believed to be acting on behalf of a foreign power; or

(c) The participation is strictly limited in its nature, scope and duration to that necessary for other lawful purposes relating to foreign intelligence and is a type of participation approved by the Attorney General and set forth in a public document. No such participation may be undertaken for the purpose of influencing the activity of the organization or its members unless the Attorney General has approved the participation and determined that it will not interfere with any rights protected by the Constitution or laws of the United States.

2-208. Collection of Nonpublicly Available Information. An agency within the Intelligence Community may collect, retain in files on identifiable United States persons, or disseminate information for foreign intelligence or counter-intelligence purposes concerning the activities of United States persons that is not available publicly, only if it does so with their consent or as permitted by procedures established pursuant to section 2-201. Those procedures shall limit collection, retention in files on identifiable United States persons, and dissemination to the following types of information:

(a) Information concerning corporations or other commercial organizations or activities that constitutes foreign intelligence or counterintelligence;

(b) Information arising out of a lawful counterintelligence or personnel, physical or communications security investigation;

(c) Information concerning persons, derived from any lawful investigation, which is needed to protect foreign intelligence or counterintelligence sources or methods from unauthorized disclosure;

(d) Information needed solely to identify individuals in contact with those persons described in paragraph (c) of this

section or in contact with someone who is the subject of a lawful foreign intelligence or counterintelligence investigation;

(e) Information concerning persons who are reasonably believed to be potential sources or contacts, but only for the purpose of determining the suitability or credibility of such persons;

(f) Information constituting foreign intelligence or counterintelligence gathered abroad or from electronic surveillance conducted in compliance with section 2-202 or gathered by lawful means in the United States;

(g) Information about a person who has acted or may be acting on behalf of a foreign power, has engaged or may be engaging in international terrorist or narcotics activities, or has endangered the safety of any person protected by the United States Secret Service or the Department of State, or may be endangering the safety of any person;

(h) Information acquired by overhead reconnaissance not directed at specific United States persons;

(i) Information concerning United States persons abroad that is obtained in response to requests from the Department of State for support of its consular responsibilities relating to the welfare of those persons;

(j) Information collected, received, disseminated or stored by the FBI and necessary to fulfill its lawful investigative responsibilities;

(k) Information concerning persons or activities that pose a credible threat to any facility or employee of any agency within the Intelligence Community or any department containing such an agency; or

(l) Information concerning persons or organizations who are the targets, victims or hostages of international terrorist organizations.

In addition, those procedures shall permit an agency within the Intelligence Community to disseminate information, other than information derived from signals intelligence, to another agency within the Intelligence Community for purposes of allowing the recipient agency to determine whether the information is relevant to its lawful responsibilities and can be retained by it.

2-3. Additional Principles.

2-301. Tax Information. Agencies within the Intelligence Community may examine tax returns or tax information only as permitted by applicable law.

2-302. Human Experimentation. No agency within the Intelligence Community shall sponsor, contract for, or conduct research on human subjects except in accordance with guidelines issued by the Department of Health and Human Services. The subject's informed consent shall be documented as required by those guidelines.

2-303. Contracting. No agency within the Intelligence Community shall enter into a contract or arrangement for the provision of goods or services with private companies or institutions in the United States unless the agency sponsorship is known to the appropriate officials of the company or institution. In the case of any company or institution other than an academic institution, intelligence agency sponsorship may be concealed where it is determined, pursuant to procedures approved by the agency head, that such concealment is necessary for authorized intelligence purposes.

2-304. Restrictions on Personnel Assigned to Other Agencies. An employee detailed to another agency within the federal government shall be responsible to the host agency and shall not report to the parent agency on the affairs of the host agency unless so directed by the host agency. The head of the host agency, and any successor, shall be informed of the employee's relationship with the parent agency.

2-305. Prohibition on Assassination. No person employed by or acting on behalf of the United States Government shall engage in, or conspire to engage in, assassination.

2-306. Special Activities. No component of the United States Government except an agency within the Intelligence Community may conduct any special activity. No such agency except the CIA (or the Armed Forces of the United States in time of war declared by Congress or during any period covered by a report from the President to the Congress under the War Powers Resolution (87 Stat. 855)) may conduct any special activity unless the President determines that another agency is more likely to achieve a particular objective.

2-307. Restrictions on Indirect Participation in Prohibited Activities. No agency of the Intelligence Community shall carry out, indirectly or by proxy, any activity forbidden by this Order or by applicable law.

2-308. Restrictions on Assistance to Law Enforcement Authorities. Agencies within the Intelligence Community other

than the FBI shall not, except as expressly authorized by law or section 2-309:

(a) Provide services, equipment, personnel or facilities to the Law Enforcement Assistance Administration (or its successor agencies) or to state or local police organizations of the United States; or

(b) Participate in or fund any law enforcement activity within the United States.

2-309. Permissible Assistance to Law Enforcement Authorities. The restrictions in section 2-308 shall not preclude:

(a) Cooperation with appropriate law enforcement agencies for the purpose of protecting the personnel, information and facilities of any agency within the Intelligence Community;

(b) Participation in law enforcement activities in accordance with law and this Order, to investigate or prevent clandestine intelligence activities by foreign powers, or international terrorist or narcotics activities; or

(c) Provision of specialized equipment, technical knowledge, or assistance of expert personnel for use by any department or agency or, when lives are endangered, to support local law enforcement agencies. Provision of assistance by expert personnel shall be approved in each case by the General Counsel of the providing agency.

2-310. Permissible Dissemination and Storage of Information. Nothing in sections 2-201 through 2-309 of this Order shall prohibit:

(a) Dissemination to appropriate law enforcement agencies of information which may indicate involvement in activities that may violate federal, state, local or foreign laws;

(b) Storage of information required by law to be retained;

(c) Dissemination of information covered by section 2-208 to agencies within the Intelligence Community or entities of cooperating foreign governments; or

(d) Lawful storage or dissemination of information for administrative purposes.

SECTION 3

OVERSIGHT OF INTELLIGENCE
ORGANIZATIONS

3-1. President's Foreign Intelligence Advisory Board.

3-101. Duties. There is hereby established within the Executive Office of the President the President's Foreign Intelligence Advisory Board, hereinafter referred to as the "Board." The Board shall:

(a) advise the President concerning measures to support and improve the performance of the Intelligence Community;

(b) advise the President concerning the objectives, conduct, management and coordination of the various activities comprising the overall national intelligence effort;

(c) conduct a continuing review and assessment of intelligence and related activities in which the Intelligence Community and other Government departments and agencies are engaged;

(d) receive, consider and take appropriate action with respect to matters identified to the Board by the Director of Central Intelligence and the heads of other Government departments and agencies of the Intelligence Community, in which the support of the Board will further the effectiveness of the national intelligence effort; and

(e) report to the President periodically, but at least semiannually, concerning the Board's findings and appraisals, and make appropriate recommendations for actions to achieve increased effectiveness of the Government's intelligence effort in meeting national intelligence needs.

3-102. Membership. Members of the Board shall be appointed by the President from among persons outside the Government, qualified on the basis of knowledge and experience in matters relating to the national defense and security, or possessing other knowledge and abilities which may be expected to contribute to the effective performance of the Board's duties. One member of the Board shall be designated by the President as chairman. The members of the Board shall receive such compensation and allowances, consonant with law, as may be prescribed hereafter.

3-103. Intelligence Oversight Committee; Duties. Three members of the Board shall be designated by the President as the Board's Intelligence Oversight Committee (IOC). The IOC shall:

(a) review periodically the practices and procedures of the Inspectors General and General Counsel with responsibilities for agencies within the Intelligence Community for discovering and reporting to the IOC intelligence activities that raise serious questions of legality and propriety, and consider written and oral reports submitted by them concerning such activities;

(b) review periodically for adequacy the internal guidelines of each agency within the Intelligence Community concerning the legality or propriety of intelligence activities;

(c) report in a timely manner to the President concerning any intelligence activities that any member of the Committee believes are a violation of the Constitution or laws of the United States, Executive Order, or Presidential Directive, or are a serious impropriety;

(d) forward to the Attorney General, in a timely manner, reports received concerning intelligence activities in which a serious question of legality has been raised or which the IOC believes to involve serious questions of legality; and

(e) conduct such reviews of the practices and activities of agencies within the Intelligence Community as the Committee deems necessary to carry out its functions under this Order.

3-2. Inspectors General and General Counsel. Inspectors General and General Counsel with responsibility for agencies within the Intelligence Community shall:

3-201. Transmit timely reports to the IOC concerning any intelligence activities that come to their attention and that raise serious questions of legality or propriety;

3-202. Promptly report to the IOC actions taken concerning the Board's findings on intelligence activities that raise serious questions of legality or propriety;

3-203. Provide to the IOC information requested concerning the legality or propriety of intelligence activities within their respective agencies;

3-204. Formulate practices and procedures for discovering and reporting to the IOC intelligence activities that raise serious questions of legality or propriety; and

3-205. Report to the IOC any occasion on which the Inspectors General or General Counsel were directed not to report any intelligence activity to the IOC which they believed raised serious questions of legality or propriety.

3-3. Attorney General. The Attorney General shall:

3-301. Receive and consider reports from agencies within the Intelligence Community forwarded by the IOC;

3-302. Report to the President in a timely fashion any intelligence activities which the Attorney General determines violate the Constitution or laws of the United States, Executive Order, or Presidential Directive;

3-303. Report to the IOC and to the President in a timely fashion decisions made or actions taken in response to reports from agencies within the Intelligence Community forwarded to the Attorney General by the IOC; and

3-304. Inform the IOC of legal opinions affecting the operations of the Intelligence Community.

3-4. Responsibilities of Heads of Departments and Agencies. In order to facilitate performance of the Board's functions, the Director of Central Intelligence and the heads of all other departments and agencies shall make available to the Board all information with respect to intelligence and related matters which the Board may require for the purpose of carrying out its responsibilities to the President in accordance with the terms of this Order. Such information made available to the Board shall be given all necessary security protection in accordance with the terms and provisions of applicable laws and regulations.

3-5. Staff. The Board shall have a staff headed by an executive secretary, who shall be appointed by the President and shall receive such compensation and allowances, consonant with law, as may be prescribed by the Board. The executive secretary shall be authorized, subject to the approval of the Board and consonant with law, to appoint and fix the compensation of such staff personnel as may be necessary for performance of the Board's duties. No person who serves on the Board or its staff shall have any contractual or employment relationship with any agency within the Intelligence Community.

3-6. Compensation and Allowances. Compensation and allowances of the Board, the executive secretary and members of the staff, together with other expenses arising in connection with the work of the Board, shall be paid from the appropriation appearing under the heading "Unanticipated Needs" in the Executive Office Appropriations Act, 1980, Pub. L. 96-74, 93 Stat. 565, and, to

the extent permitted by law, from any corresponding appropriation which may be made for subsequent years. Such payments shall be made without regard to the provisions of §3681 of the Revised Statutes and §9 of the Act of March 4, 1909, 35 Stat. 1027 (31 U.S.C. 672 and 673).

3-7. Congressional Oversight. The duties and responsibilities of the Director of Central Intelligence and the heads of other departments, agencies, and entities engaged in intelligence activities to cooperate with and assist the Congress in the conduct of its responsibilities for oversight of intelligence activities shall be as provided in title 50, United States Code, §413.

SECTION 4

GENERAL PROVISIONS

4-1. Implementation.

4-101. Except as provided in section 4-105 of this section, this Order shall supersede Executive Order 12036, "United States Intelligence Activities," dated January 24, 1978, and sections 1-104 and 1-105 of Executive Order 12139, "Foreign Intelligence Electronic Surveillance," dated May 23, 1979.

4-102. The NSC, the Secretary of Defense, the Attorney General and the Director of Central Intelligence shall issue such appropriate directives and procedures as are necessary to implement this Order.

4-103. Heads of agencies within the Intelligence Community shall issue appropriate supplementary directives and procedures consistent with this Order.

4-104. The Attorney General shall have sole authority to issue and revise procedures required by section 2-201 for the activities of the FBI relating to foreign intelligence and counterintelligence. The Attorney General shall also develop procedures for coordination by the Drug Enforcement Administration (DEA) with the Director of Central Intelligence to ensure that the criminal narcotics intelligence activities of DEA are consistent with foreign intelligence programs. Procedures shall also be developed for coordination by DEA of its production and dissemination of intelligence on the foreign and domestic aspects of narcotics production and trafficking with other agencies with responsibilities in these areas. Liaison with intelligence and internal security services of foreign governments will be conducted in accordance with procedures established by the Director of Central Intelligence.

4-105. Until the procedures required by this Order have been established, the activities authorized and regulated herein shall be conducted in accordance with procedures heretofore approved or agreed to by the Attorney General pursuant to Executive Order 12036. Procedures required by this Order shall be established as expeditiously as possible.

4-106. In some instances, the documents that implement this Order will be classified because of the sensitivity of the information and its relation to national security. All instructions contained in classified documents will be consistent with this Order. All procedures promulgated pursuant to this Order

will be made available to the Congressional intelligence committees in accordance with applicable law.

4-107. Unless otherwise specified, the provisions of this Order shall apply to activities both within and outside the United States, and all references to law are applicable laws of the United States, including the Constitution and this Order. Nothing in this Order shall be construed to apply to or interfere with any authorized civil or criminal law enforcement responsibility of any department or agency.

4-2. Definitions.

For the purposes of this Order, the following terms shall have these meanings:

4-201. Communications security means protection measures taken to deny unauthorized persons information derived from telecommunications of the United States Government related to national security and to ensure the authenticity of such communications. Such protection results from the application of security measures (including cryptosecurity, transmission security, emissions security) to electrical systems generating, handling, processing, or using national security or national security related information. It also includes the application of physical security measures to communications security information or materials.

4-202. Counterintelligence means information gathered and activities conducted to protect against espionage, other intelligence activities, sabotage or assassinations conducted for or on behalf of foreign powers, organizations or persons, or international terrorist activities, but not including personnel, physical, document, or communications security programs.

4-203. Electronic Surveillance means acquisition of a nonpublic communication by electronic means without the consent of a person who is a party to an electronic communication or, in the case of a nonelectronic communication, without the consent of a person who is visibly present at the place of communication, but not including the use of radio direction finding equipment solely to determine the location of a transmitter.

4-204. Employee means a person employed by, assigned to, or acting for an agency within the Intelligence Community.

4-205. Foreign Intelligence means information relating to the capabilities, intentions and activities of foreign powers, organizations or persons, but not including counterintelligence except for information on international terrorist activities.

4-206. Intelligence means foreign intelligence and counterintelligence.

4-207. Intelligence Community and agencies within the Intelligence Community refer to the following agencies or organizations:

(a) Central Intelligence Agency (CIA);

(b) The National Security Agency (NSA);

(c) The Defense Intelligence Agency;

(d) The Offices within the Department of Defense for the collection of specialized national foreign intelligence through reconnaissance programs;

(e) The Bureau of Intelligence and Research of the Department of State;

(f) The intelligence elements of the military services, the Federal Bureau of Investigation (FBI), the Department of the Treasury, and the Department of Energy; and

(g) The staff elements of the Director of Central Intelligence.

4-208. Intelligence product means the estimates, memoranda and other reports produced from the analysis of available information.

4-209. International terrorist activities means any activity or activities which:

(a) involves killing, causing serious bodily harm, kidnapping, or violent destruction of property, or an attempt or credible threat to commit such acts; and

(b) appears intended to endanger a protectee of the Secret Service or the Department of State or to further political, social or economic goals by intimidating or coercing a civilian population or any segment thereof, influencing the policy of a government or international organization by intimidation or coercion, or obtaining widespread publicity for a group or its cause; and

(c) occurs totally outside the United States or transcends national boundaries in terms of the means by which it is accomplished, the civilian population, government, or international organization it appears intended to coerce or intimidate, or the locale in which its perpetrators operate or

seek asylum.

4-210. The National Foreign Intelligence Program includes the programs listed below, but its composition shall be subject to review by the National Security Council and modification by the President.

(a) The programs of the CIA;

(b) The Consolidated Cryptologic Program, the General Defense Intelligence Program, and the programs of the offices within the Department of Defense for the collection of specialized national foreign intelligence through reconnaissance except such elements as the Director of Central Intelligence and the Secretary of Defense agree should be excluded;

(c) Other programs of agencies within the Intelligence Community designated jointly by the Director of Central Intelligence and the head of the department or by the President as national foreign intelligence or counterintelligence activities;

(d) Activities of the staff elements of the Director of Central Intelligence.

(e) Activities to acquire the intelligence required for the planning and conduct of tactical operations by the United States military forces are not included in the National Foreign Intelligence Program.

4-211. Physical surveillance means an unconsented, systematic and deliberate observation of a person by any means on a continuing basis, or unconsented acquisition of a nonpublic communication by a person not a party thereto or visibly present threat through any means not involving electronic surveillance. This definition does not include overhead reconnaissance not directed at specific United States persons.

4-212. Special activities means activities conducted in support of national foreign policy objectives abroad which are designed to further official United States programs and policies abroad, are not intended to influence U.S. public opinion or policies, and which are planned and executed so that the role of the United States Government is not apparent or acknowledged publicly, and functions in support of such activities, but not including diplomatic activity or the collection and production of intelligence or related support functions.

4-213. Telecommunications means the transmission, communication or processing of information, including the preparation of information therefor, by electrical, electromagnetic, electro-mechanical or electro-optical means.